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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 402—October Term, 1964.

Henry Wasmuth, Robert A. Davis, Daniel McGaurn and Leonard Feldman, suing on behalf of themselves and all other chiropractors in the State of New York who are similarly situated,

Plaintiffs-Appellants,

against

James E. Allen, Jr., as Commissioner of Education of the State of New York, and The Regents of the University of the State of New York,

Defendants-Appellees.

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

Point I. *Chiropractic Association of New York* v. *Hilleboe*, 12 N. Y. 2d 109, dealt entirely with X-ray. That decision upheld the validity of a regulation of the Public Health Council of New York limiting the use of X-ray by chiropractors. It turned in no respect on "want of knowledge of medicine", a subject not mentioned in the opinion.

In the present case the Court of Appeals cited *Chiropractic Association* as authority for the proposition that chiropractors should know X-ray because they use it (Jurisdictional Statement, page 9a). But that proposition does not support—on the contrary, it detracts from—the conclusion that chiropractors should be denied the right to

prove that they do not need to know either (1) the use and effects of drugs, medicines, sera, hormones, or electrical devices which they do not, and are forbidden to, use, or (2) the treatment of infectious diseases, cancer, diabetes, etc., which they do not, and are forbidden to, treat. The Court of Appeals did not cite *Chiropractic Association* for that conclusion, but relied on the general authority of legislative bodies (Jurisdictional Statement, pages 9a-11a).

Nor does the proposition that chiropractors should know X-ray because they use it establish that chiropractors should be denied the right to prove that others use X-ray as much or more than they, and therefore, should also be required to know its "use and effects". In short, to prove that there is "no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched". *Watson* v. *Maryland*, 218 U. S. 173, 179. Indeed, if X-ray is as dangerous as appellees say it is, it would seem clear that anyone who uses X-ray should have that knowledge.

POINT II. There is no "presumption that the Legislature has, before passing a bill, satisfied itself of the existence of facts necessary to support the legislation". Quite the contrary, the decisions of this Court cited by appellees turned on evidence, not on presumptions. No evidence has ever been offered in any court or legislative body to show why chiropractors must have "thorough" medical knowledge of diseases they do not and are forbidden to treat and of techniques they do not and are forbidden to use.

This Court has repeatedly insisted, as did the Fifth Circuit in *England*, the "facts should be accurately ascertained and weighed" in constitutional cases, *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 549. Cf. *Borden's Co.* v. *Baldwin*, 293 U. S. 194, 209, 213.

POINT III. Appellees' lack of comprehension of the *England* decisions is indicated by their statement on page 4, "when the trial which this Court ordered was had in the State court." As this Court ordered the trial in January, 1964, and as the State Court litigation ended in 1961 (126 So. 2d 51), obviously the trial ordered by this Court was not the trial in the State Court. We noted at page 14 of the Jurisdictional Statement that the trial ordered by this Court has not yet been held, and that meanwhile the chiropractors are practicing without interference, according to information supplied by counsel in that case.

Appellees cited the Louisiana decision that licensing chiropractic is "peculiarly within the wisdom of" the Legislature (page 5).

The legislatures of 45 states have licensed chiropractic; in three states chiropractors are neither licensed nor interfered with; in Louisiana and New York, medical knowledge is required as a condition of practicing chiropractic, and the courts of the United States have said, with the sanction of this Court, that Louisiana must prove the propriety of this condition. Our claim that New York should also be so required, does not, we submit, come within the doctrine of *Zucht* v. *King*, 260 U. S. 174.

Respectfully submitted,

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Dated: New York, N. Y.
August 28, 1964

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